

October 18, 2005

Michael N. Villines  
Assemblymember, 29<sup>th</sup> District  
California Legislature  
State Capitol  
*[Address Redacted]*  
Sacramento, CA 94249-0029

**Re: Your Request for Informal Assistance  
Our File No. I-05-201**

Dear Assemblymember Villines:

This letter is in response to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").<sup>1</sup> Since you have not named the official(s) on whose behalf you are requesting advice, your request will be treated as one for informal assistance. Informal assistance does not provide the immunity conferred by formal written advice. (Regulation 18329(c)(3) copy enclosed.)

While generally, the burden of complying with the gift limits of the Act is placed on the public official, the donor also has duties under the Act and is subject to liability under section 89521 for the making of a gift in violation of the gift limits. Thus, we advise concerning your duties and those of the California Farm Water Coalition (CFWC) in connection with public officials designated by the CFWC to receive the gifts.

### **QUESTION**

Is air and van transportation provided to Legislators by the CFWC in connection with a tour of the Delta intended to increase the Legislators' awareness of agricultural use of water in the Delta a reportable gift to the Legislators?

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

## CONCLUSION

The tour would be ‘informational material’ because it serves primarily to convey information and is not a reportable gift. However, any other benefits, such as food or drinks that are provided in connection with the tour are considered reportable gifts to the extent that they equal \$50 or more.

## FACTS

You are the Vice Chair of the Assembly’s Water, Parks and Wildlife Committee and also Chair of the Legislature’s Rural Caucus. In these capacities, you have attempted to highlight the importance of water issues to all Californians. Consistent with this, you are working with the CFWC to organize an informational tour of the Delta for legislators to take place in November. The CFWC is a nonprofit organization, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The CFWC does not employ a lobbyist or lobby the Legislature. Instead, its mission is to increase public awareness of agriculture’s efficient use of water and to promote the agricultural industry’s environmental sensitivity regarding water.

The details of the tour are as follows.

- The tour will take place from 10:00 a.m. until 4:25 p.m. on November 10, 2005.
- The tour will commence with the legislators convening at the Sacramento Executive Airport, where they will receive a brief California water overview, review the day’s agenda and receive briefing books. The legislators will provide their own transportation to and from the Sacramento Executive Airport.
- At 10:30 a.m. they will board an airplane for an aerial tour of the Sacramento River Delta, during which they will view portions of the Delta and receive pertinent information on the Delta and its relation to California’s water system. This information will be provided by CFWC staff.
- At 11:15 a.m. the airplane will land at the Byron airport near the Delta’s Clifton Court fore bay. This location is approximately 50 miles south of Sacramento. At that point, the legislators will board vans for a short trip to the federal fish screen facility to tour that facility from 11:30 a.m. until noon. This tour will be conducted by a biologist from the U.S. Bureau of Reclamation.

- The legislators will then be transported by van for a 10-minute ride to the U.S. Bureau of Reclamation federal pumping plant, where, from 12:10 p.m. until 12:50 p.m., they will receive lunch and discuss Central Valley Water Project operations with management staff from the San Luis and Delta Mendota Water Authority.
- At 12:50 p.m., staff of the San Luis and Delta Mendota Water Authority will conduct a tour of the federal pumping plan until 1:30 p.m.
- The legislators will then be transported by van for a short ride to the Banks pumping plant, where, at 1:45 p.m., they will tour that plant and receive information on state water project operations from staff of the State water contractors.
- At 2:30 p.m., the legislators will again board the vans and return to the Byron airport for the return flight to Sacramento, during which they will fly over the San Luis Reservoir, California Aqueduct, and Mendota Pool to view, receive information on, and discuss with CFWC staff, canals, operations and water distribution.
- They will arrive in Sacramento at 4:25 p.m. The airplane and van transportation, as well as the lunch, will be provided by the CFWC.

### ANALYSIS

#### *Gifts.*

As an initial matter, the term “gift” is defined as:

“[A]ny payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”

(Section 82028(a), Emphasis added.)

Thus, absent an exception, the value of the entire tour of the Delta would be considered a gift to participating Legislators.<sup>2</sup>

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<sup>2</sup> Also, under the facts you have provided, the payments made at your behest in connection with the tours provided to Legislators will be principally for a charitable/governmental/legislative purposes. Thus, the payments fall under amendments in 1997 to the definition of “contribution” for co-sponsored events. These payments must be reported by

*Exceptions.*

“(b) The term ‘gift’ does not include:

“(1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed “informational material.”

(Section 82028(b)(1).)

Regulation 18942.1 provides:

“ ‘Informational material’ means any item which serves primarily to convey information and which is provided to an official for the purpose of assisting him or her in the performance of his or her official duties. Informational material may include:

¶...¶

“(c) On-site demonstrations, tours, or inspections designed specifically for public officials. No payment for transportation to an inspection, tour, or demonstration site, nor reimbursement for any expenses in connection therewith, shall be deemed “informational material” except insofar as such transportation is not commercially obtainable.”<sup>[3]</sup>

In the *Barker* Advice Letter, No. I-93-186, we applied this exception to a similar tour of the Delta and advised that the aerial (and bus) tour of the Delta would be considered “informational material.” In that case, as here, the tour of the Delta and water facilities was reasonably necessary to assist members of the Legislature in dealing with legislation relating to California water policy.

Moreover, in that case, the tour was designed in coordination and cooperation with the California Department of Water Resources and the California Department of Fish and Game specifically for the Legislators, and was formally structured to convey information to the officials. We advised that under

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you within 30 days following the date on which the payment or payments equal or exceed \$ 5,000 in the aggregate from the same source in the same calendar year.

<sup>3</sup> The basis for this exception was described in *In re Spellman* (1975) 1 FPPC Ops. 16, in which the Commission considered a tour provided by Pacific Gas & Electric Company. “The acquisition of adequate information is essential to sound legislative and administrative action. It is not the purpose for the Political Reform Act in any way to interfere in the free flow of information to officials. Only financial pressures and inducements are sought to be limited and disclosed. See Section 81001(b). The tour outlined here would increase the knowledge of the legislative official and would neither be prohibited nor reportable as a gift under the Act.”

the circumstances, it appeared to be a reasonable means to convey the information and did not appear extravagant in value or nature in relationship to the information conveyed.

Under your facts, the information will be provided by both CFWC and public agency staff. The CFWC is a nonprofit organization, exempt from taxation under section 501(c)(3) of the Internal Revenue Code and does not lobby or employ a lobbyist to lobby the Legislature. In addition, the tour appears to be a reasonable means to convey the information and does not appear extravagant in value or nature in relationship to the information conveyed. Therefore, no reportable gift would result. However, other benefits, such as food, would be considered a gift. Gifts that total \$50 or more are reportable. (Section 87207.) In addition, the current gift limit is \$360. (Section 89503, regulation 18940.2.)

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: John W. Wallace  
Assistant General Counsel  
Legal Division

Enclosure

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Corrected Letter 10/27/05